Supreme Court, U.S.
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No. 89-57

In The

Supreme Court of the United States

October Term, 1989

JOHN M. PICCIOLO, DEFENDER YACHT CORP. and ATLANTIC AEROMARINE ASSOCIATES, INC.,

Petitioners,

vs.

CLEVELAND JONES, JR., CAROLINE JONES, FRANK JONES, JOYCE JONES and JONES BOAT YARD, INC.,

Respondents.

PETITIONERS' REPLY BRIEF

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REASONS FOR GRANTING THE WRIT

Respondents assert that this court has already settled the questions presented for review in the cases of *Vaughn v. Vermillion Corp.*, 444 U.S. 206 (1979), and *Kaiser Aetna v. United States*, 444 U.S. 164 (1979). Neither of these cases involved an attempt to make an end run around the Administrative Procedure Act at 5 U.S.C. § 706 and the jurisdiction of the U.S. district courts, which is at the heart of the present case.

In the present case, the U.S. Army Corps of Engineers has ruled that the channel at issue is a navigable water of the United States and that the respondent cannot block that channel. Instead of following the procedures of the Administrative Procedure Act and seeking judicial review in the U. S. District Court, the respondents went to a state court and obtained an injunction that petitioners could not navigate through the channel involved in this case. In *Vaughn v. Vermillion Corp.*, 444 U.S. 206, there was no prior ruling by the U.S. Army Corps of Engineers concerning navigability and determining that the owner of the bottom land could not obstruct the navigable channel. It is that conflict of authority between the state and national governments which raises an important question of federal law which should be settled by this court.

Petitioners assert that the Florida courts' resolution of this issue in favor of the power of the state is in conflict with the applicable decisions of this court. To the extent that there is any doubt concerning this issue, which is central to the concept of federalism and division of powers, it is important that the issue be settled by this

court so that governmental authorities can know the correct relationship between the state and national governments.

In *Kaiser Aetna v. United States*, 444 U.S. at 168-69, the owner of the bottom land sought judicial review of the Corps of Engineers' ruling in the U.S. District Court. No attempt was made to bypass the authority of the courts of the United States. It is this jurisdictional matter which distinguishes the present case from the *Kaiser Aetna* decision and which is at the heart of the questions presented for review in this court. Further, *Kaiser Aetna* makes clear that in resolving the substantive issue of the case the trial court is to examine the economic impact of the Corps' regulation, interference with reasonable investment backed expectations and the character of the governmental action. It is the failure of the Florida trial court to follow the factual inquiry outlined in *Kaiser Aetna* which forms the basis for the third question presented for review by the plaintiff. If anything, *Kaiser Aetna* is an applicable decision of this court which is in conflict with the decisions of the Florida courts below.

CONCLUSION

The present case raises important questions of federal law that concern the relationship between state and federal authority and the right to navigate waters connecting to interstate and foreign commercial routes. Petitioners pray that the court assume jurisdiction over the case so that these issues can be resolved.

Date: September 12, 1989

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